

THOMAS STALCUP

V.

Civil Action No. XXXXX

Defendant.

1. The plaintiff, THOMAS STALCUP at all times relevant to the allegations of this Complaint, is a citizen of the United States of America and has been a resident of the Town of Sandwich, Barnstable County, in the Commonwealth of Massachusetts.

2. Defendant the Naval Special Warfare Command (“NSWC”) is a department of the U.S. Navy. The NSWC is an agency within the meaning of 5 U.S.C. § 552(f)(1) (2010). The Navy SEALs (“SEALS”) is a component of the NSWC .

3. Subject matter jurisdiction exists pursuant to 5 USC § 552(a)(4)(B) which grants a district court of the United States jurisdiction to enjoin an agency from improperly withholding records and to order said agency to produce such records to the complainant. Venue is proper in the District of Massachusetts under 5 USC § 552(a)(4)(B) which grants jurisdiction to the district court in the district in which the complainant, Chairman of the Flight 800 Independent Researchers Organization, Thomas F. Stalcup, lives.

4. Plaintiff Stalcup, has exhausted his administrative remedies, and is therefore entitled to judicial review of this claim pursuant to 5 USC § 552(a)(4)(B).

III. STATEMENT OF FACTS

The Navy SEALs Participated in the 1996 TWA Flight 800 Crash Recovery Efforts

5. The SEALs are part of the NSWC and are an elite branch of the US Navy that defend our nation and our allies worldwide.

6. In fulfilling this responsibility, the SEALs train extensively underwater, including underwater explosives ordinance disposal.

7. The SEALs participated in the recovery effort after the July 17, 1996 crash of TWA Flight 800, which crashed approximately ten miles off the coast of Long Island, New York.

8. The SEALs are made up of various groups, units, and teams, including “Special Boat Unit Twenty”, “Special Warfare Group Two”, and “SEAL Delivery Vehicle Team Two”.

9. An official website published by the U.S. Navy states that Special Boat Unit Twenty, together with divers from Special Warfare Group Two and SEAL Delivery Vehicle Team Two participated in the TWA Flight 800 recovery efforts. As of the writing of this complaint, the official Navy website listing these participants is accessible at: http://www.navy.mil/navydata/navy_legacy_hr.asp?id=290. A printed copy of this website is attached to this complaint as **Exhibit A**.

Plaintiff Stalcup Submitted a FOIA Request to United States Special Operations Command Regarding Navy SEAL Activity in the New York Area in 1996

10. On March 30, 2010, Plaintiff Stalcup transmitted, via an Internet submission form, a written FOIA request to the United States Special Operations Command in Tampa, FL, who then forwarded this request to the NSWC in San Diego, CA. The request was for all data, imagery, video, memos, communication,

reports, emails or any other information regarding any and all Navy Seal activity within 100 miles of the coast of Long Island, NY during the months of July and August 1996. In addition to the above request, Plaintiff Stalcup specifically requested any and all agency records that include:

- a. the names, locations, and dates of any and all missions, exercises, or other activity on July 17th and 18th, 1996;
- b. the names of all participating Seal teams and/or units in these activities
- c. detailed descriptions of these activities
- d. any and all information regarding any mishaps or successful engagements these Seal teams or units witnessed and/or were responsible for
- e. any information that mentions or discusses the downing or loss of any aircraft.
- f. the names, locations, and dates of any and all missions, exercises, or other activity on or after July 17th , 1996 involving the recovery of floating or submerged debris from TWA Flight 800, a drone, a missile, or any other type of ordnance within 100 miles of the coast of Long Island, NY
- g. the names of all participating Seal teams and/or units in these recovery activities
- h. detailed descriptions photos, and/or videos of these activities and any items recovered.

11. Plaintiff Stalcup also requested a waiver of fees because Plaintiff Stalcup's interest in the records is not primarily commercial and disclosure of the information will contribute significantly to public understanding of the events leading up to present status of the federal investigation into the crash of TWA Flight 800.

The NSWC Failed to Locate Responsive Documents

12. Plaintiff Stalcup received a letter from NSWC dated April 27, 2010 stating that no responsive documents were located after searching the "Command Public Affairs Office, Command Historian's

Office, Command Operations Directorate, Naval Special Warfare Group TWO, and Naval Warfare Development Group.”

13. NSWC notified Plaintiff Stalcup of its right to an administrative appeal and instructed Plaintiff Stalcup to send any such appeal to the Judge Advocate General of the Navy in Washington, D.C.

Plaintiff Stalcup Filed an Administrative Appeal with Judge Advocate General of the Navy

14. On June 14, 2010, Plaintiff Stalcup sent via certified mail an administrative appeal to the Judge Advocate General of the Navy (“Plaintiff Stalcup’s Administrative Appeal”).

15. Plaintiff Stalcup’s Administrative Appeal appealed the NSWC’s failure locate responsive documents, “because the 1996 crash of TWA Flight 800 was an historic event and the Seals’ documented involvement in the search and recovery effort ten miles off the coast of Long Island required extensive planning, coordination, and communication between the Seals and the various agencies involved in the recovery effort.” Plaintiff Stalcup’s appeal went on to say that such “an effort would have resulted in volumes of documents, communications, and reports regarding this complex operation.”

16. Plaintiff Stalcup’s Administrative Appeal also provided an official Navy Internet link listing the specific SEAL unit involved in the recovery operation, as well as other Seal groups who provided divers to assist in the recovery effort.

Judge Advocate General of the Navy Denies Plaintiff Stalcup’s Administrative Appeal

17. Plaintiff Stalcup received a letter dated July 15, 2010 from the Judge Advocate General of the Navy (“JAG”) denying Plaintiff Stalcup’s Administrative Appeal.

18. JAG based its denial on a determination that the NSWC conducted an adequate search by searching “its hard copy and electronic records located within its Command Public Affairs Office,

Command Historian's Office, Command Operations Directorate, Naval Special Warfare Group TWO (NSWG-2), Naval Special Warfare Group FOUR (NSWG-4) and Naval Special Warfare Development Group (NSWDG) and its component commands, including Special Boat Unit TWENTY.”

19. JAG also informed Plaintiff Stalcup that upon receipt of Plaintiff Stalcup's appeal, a responsive document was located by the NSWC command historian, who located it at the Naval Historical Center in Washington, D.C. The document located is the 1996 Command History of the Navy Special Warfare Group TWO (NSWG-2). JAG informed Plaintiff Stalcup that this document will be provided to Plaintiff Stalcup by NSWC.

20. Command Histories are brief summaries of a specific Navy group, ship, unit, air-wing, etc. Although JAG stated that NSWC would be providing the NSWG-2 1996 Command History, Plaintiff Stalcup has not yet received this document. Now, at the writing of this complaint, many months have passed from the date Plaintiff Stalcup received JAG's letter and assurance that the NSWG-2 1996 Command History document would be provided.

21. Although JAG stated that the NSWC's search was “adequate and reasonably calculated to uncover all relevant documents,” that search located no responsive documents. A subsequent search located a responsive document.

22. Due to the high-profile nature of the recovery operation of TWA Flight 800, a commercial 747 aircraft that crashed only ten miles off of Long Island in 1996, hundreds if not thousands of documents likely exist regarding the Navy SEALs' well documented involvement in the salvage operations. Documents from these operations must certainly be maintained somewhere in the NSWC offices, and they should be readily available to any FOIA officer conducting a reasonably calculated search. If not, then the NSWC is obligated to forward the initial FOIA request to the appropriate office or agency that maintains such records.

Count I
Violation of the FOIA: Failure to Conduct and Adequate Search

23. Paragraphs 1-22 above are hereby incorporated by reference as if set forth fully herein.

24. The adequacy of the NSWG's search under the FOIA is determined by a test of "reasonableness." The NSWG's search was not "reasonably calculated to uncover all relevant documents." (157)

25. Plaintiff Stalcup has exhausted the applicable administrative remedies with respect to Plaintiff Stalcup's FOIA Request.

26. The NSWG has wrongly withheld responsive agency records from Plaintiff Stalcup.

27. Plaintiff Stalcup is entitled to injunctive relief compelling the release and disclosure of the requested agency records.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendant to conduct an adequate search for agency records responsive to Plaintiff Stalcup's

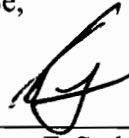
FOIA Request within five working days of the date of the Court's Order in this matter, with such searching including but not limited all offices of the NSWG, and where appropriate, to forward the original FOIA request to any other agency or office that may maintain such records;

B. order defendant to produce all responsive agency records within ten business days of the Court's Order in this matter;

- C. award plaintiff its costs and reasonable legal fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E) (2010); and grant such other relief as the Court may deem just and proper.

Dated: August 13, 2013

For the Plaintiff, Thomas Stalcup
Pro Se,



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157. Weisberg, 705 F.2d at 1351; see, e.g., Johnston v. United States Dep't of Justice, No. 97-2173, 1998 WL 518529, at *1 (8th Cir. Aug. 10, 1998) (concluding that agency demonstrated that it conducted search reasonably calculated to uncover all responsive documents); Campbell v. United States Dep't of Justice, 164 F.3d 20, 27 (D.C. Cir. 1998) (noting that an agency must search "using methods which can be reasonably expected to produce the information requested" (quoting Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990))); Miller v. United States Dep't of State, 779 F.2d 1378, 1383 (8th Cir. 1985) (recognizing that search must be "reasonably calculated to uncover all relevant documents" (quoting Weisberg, 705 F.2d at 1351)); cf. Comer v. IRS, No. 97-76329, 2000 WL 1566279, at *2 (E.D. Mich. Aug. 17, 2000) ("[T]he government is not required to expend the same efforts under FOIA that it would in response to a litigation-specific document request."). But see Al Najjar v. Ashcroft, No. 00-1472, slip op. at 4-5 (D.D.C. July 22, 2003) (acknowledging that the agency's "affidavit on its face tends to establish the adequacy of the search," yet nonetheless requiring the agency to conduct a further search "in the interest of ensuring a complete resolution of this matter" and in light of the "limited burden" that the further search ostensibly would impose).